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Message Text

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73
ACTION L-02

INFO OCT-01 IO-10 ISO-00 CIAE-00 DODE-00 PM-03 H-02 INR-07

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

EUR-12 ACDA-05 TRSE-00 SAJ-01 OIC-02 /075 W
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R 111205Z APR 75
FM US MISSION GENEVA
TO SECSTATE WASHDC 2004

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DEPT FOR L/T-ROVINE FROM SMALL

E.O. 11652: N/A
TAGS: CSCE, PFOR, XG
SUBJECT: CSCE: DECLARATION OF PRINCIPLES-INVALIDITY OF TREATIES

1. SOLE REMAINING ISSUE OF SIGNIFICANCE IN FIRST READING OF TENTH PRINCIPLE ASIDE FROM QRR'S IS WHETHER AND HOW TO QUALIFY REFERENCE TO OBLIGATIONS ARISING FROM TREATIES OR OTHER INTERNATIONAL AGREEMENTS, TO CONVEY NOTION THAT SOME ILLEGAL AGREEMENTS CANNOT OR NEED NOT BE FULFILLED. USSR (AND TURKS) WANT NO QUALIFICATION. FRIENDLY RELATIONS FORMULA IS STRONGEST REFERENCE TO IN-VALIDITY OF INTERNATIONAL AGREEMENTS IN PLAY AMONG PRO-PONENTS OF A QUALIFICATION. WE BELIEVE THAT ANY OF THE LIKELY OUTCOMES SHOULD BE ACCEPTABLE FOR US, BUT SINCE NOT ALL THESE OUTCOMES ARE COVERED BY DEL'S TECHNICAL GUIDANCE, FOLLOWING INFO IS PROVIDED.

2. CURRENT NEGOTIATING TEXT OF FIRST PARAGRAPH OF TENTH PRINCIPLE READS AS FOLLOWS (NUMBERS IN PARENTHESES REFER TO FOOTNOTED ALTERNATIVES FAVORED BY ONE OR ANOTHER DELEGATION; DOUBLE PARENTHESES REPRESENT SQUARE BRACKETS):
BEGIN TEXT: THE PARTICIPATING STATES WILL FULFILL
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IN GOOD FAITH THEIR OBLIGATIONS UNDER INTERNATIONAL

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LAW (1), BOTH THOSE OBLIGATIONS ARISING FROM THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW AND THOSE OBLIGATIONS ARISING FROM TREATIES OR OTHER (2) INTERNATIONAL AGREEMENTS (3) (,) TO WHICH THEY ARE PARTIES (,) IN CONFORMITY WITH/(4) UNDER ((THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW/THE CHARTER OF THE UNITED NATIONS/INTERNATIONAL LAW)) (5). END TEXT.

FOOTNOTES AND BRACKETS REPRESENT FOLLOWING: SWISS, WITH SUPPORT OF VARIOUS WESTERN DELEGATIONS WOULD BE PREPARED TO END THE FIRST PARAGRAPH AT (1), THUS AVOIDING THE PROBLEM OF QUALIFYING "TREATIES AND AGREEMENTS". TURKS WOULD INSERT "BINDING" AT (2), THUS QUALIFYING "OTHER INTERNATIONAL AGREEMENTS" BUT IMPLYING, WITH A CERTAIN LOGIC, THAT ALL TREATIES ARE BINDING. THIS IS SUPPORTED BY USSR, WHICH INSISTS ON SEPARATE MENTION OF "TREATIES", NOT JUST "INTERNATIONAL AGREEMENTS" AND WILL ACCEPT NO MEANINGFUL QUALIFICATION OF FORMER. THE YUGOSLAVS WOULD END THE TEXT AT (3), ADDING THE WORDS "OTHER AGREEMENTS GOVERNED BY INTERNATIONAL LAW". VARIOUS DELEGATIONS FAVOR "VALID UNDER" AT (4), INSTEAD OF "IN CONFORMITY WITH", FOLLOWED BY THE REMAINDER OF THE FRIENDLY RELATIONS FORMULATION. FOOTNOTE (5) REPRESENTS THE GENERAL WESTERN VIEW THAT THE WORDS "TO WHICH THEY ARE PARTIES" SHOULD FOLLOW, NOT PRECEDE, A QUALIFICATION BEGINNING "IN CONFORMITY WITH" OR "UNDER", SO THAT THE QUALIFICATION REFERS TO THE AGREEMENT AS A WHOLE, NOT JUST THE MEANS OF BECOMING PARTY. THE COMMAS (SHOWN IN UNNUMBERED PARENTHESES) AROUND THE PHRASE "TO WHICH THEY ARE PARTIES" ARE ANOTHER DEVICE PROPOSED TO ACCOMPLISH THE SAME PURPOSE. THE BRACKETS AT THE END REPRESENT, FIRST, THE GENERAL WESTERN PREFERENCE FOR "THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW" SECOND, THE SOVIET PREFERENCE FOR "THE CHARTER OF THE UNITED NATIONS; AND, THIRD, THE ROMANIAN PROPOSAL FOR "INTERNATIONAL LAW".

3. SOVIETS HAVE ALSO PUT FORTH FOLLOWING ALTERNATIVE SOLUTION:
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BEGIN TEXT: THE PARTICIPATING STATES WILL FULFILL IN GOOD FAITH THEIR OBLIGATIONS UNDER INTERNATIONAL LAW, BOTH THOSE OBLIGATIONS UNDER INTERNATIONAL LAW ARISING FROM THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW AND THOSE OBLIGATIONS UNDER INTERNATIONAL LAW ARISING FROM TREATIES OR OTHER INTERNATIONAL AGREEMENTS TO WHICH THEY ARE PARTIES. END TEXT.

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4. ALONG WITH MOST OF NATO GROUP, WE BELIEVE THAT TEXT WITHOUT ANY OF THESE QUALIFICATIONS WOULD BE ACCEPTABLE IN LIGHT OF FIRST QUALIFYING PHRASE "OBLIGATIONS UNDER INTERNATIONAL LAW". WE COULD ALSO EASILY ACCEPT ANY OF THE OPTIONS IN PLAY, EXCEPT TURKISH SUGGESTION OF INSERTION OF WORD "BINDING" TO QUALIFY ONLY "OTHER INTERNATIONAL AGREEMENTS", OR FORMULATIONS WHICH WOULD INCLUDE A QUALIFICATION BUT APPLY IT ONLY TO THE MEANS OF BECOMING BOUND BY AN AGREEMENT. WE NOTE THAT PHRASE "TO WHICH THEY ARE PARTY" DOES NOT COVER GERMAN OBLIGATIONS UNDER FOUR POWER AGREEMENTS, BUT NEITHER DOES IT PREJUDICE THEM EXCEPT BY OMISSION, WHICH QRR TEXT SHOULD ADEQUATELY CURE.

5. UNLESS DEPARTMENT WISHES TO PROVIDE OTHER GUIDANCE, WE WILL CONTINUE GENERALLY TO SUPPORT EFFORTS OF MOST NATO AND NEUTRAL DELS FOR SOME ACCEPTABLE QUALIFICATION ALONG THE LINES OF THE ALTERNATIVES DESCRIBED, EXCEPT THOSE REJECTED IN PARA FOUR ABOVE, BUT WILL AGREE TO A TEXT WITH NONE IF A TREND TOWARD SUCH A CONSENUS EMERGES.
ABRAMS

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